



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

APR 08 2010

201026038

Uniform Issue List: 408.03-00

SE: T: EP: RA: T1

Legend:

Taxpayer A	=
IRA B	=
Financial Institution C	=
Account D	=
Financial Institution E	=
Account F	=
Account G	=
Financial Institution H	=
Amount 1	=
Amount 2	=

Dear :

This letter is in response to a request for a letter ruling dated September 30, 2009, as supplemented by additional information dated October 21, and December 16, 2009, January 21, and March 16, 2010, from your authorized representative, in which you have request a waiver of the 60-day rollover requirement contained in section 408(d)(3) of the Internal Revenue Code ("Code).

The following facts and representations have been submitted under penalty of perjury in support of the ruling requested:

Taxpayer A, age 62, represents that her failure to accomplish a rollover within the 60-day period prescribed by Code section 408(d)(3) was due to her mental and physical conditions which impaired her ability to manage her financial affairs. Taxpayer A further represents that Amount 2 has not been used for any purpose.

Taxpayer A maintained IRA B, an individual retirement account (IRA) under section 408 of the Code. Taxpayer A represents that she was dissatisfied with the investment performance of IRA B and desired to transfer Amount 2 to an IRA maintained with a different Financial Institution. In _____, because of uncertainty about how to complete the transaction, Taxpayer A visited Financial Institution C. Taxpayer A met with a financial consultant at Financial Institution C and requested assistance with the direct rollover of Amount 2. Taxpayer A was informed that Financial Institution C would be unable to complete a direct rollover and recommended that she transfer the funds to her checking account and then rollover the funds to an IRA. On _____, Taxpayer A transferred Amount 2 to her checking account (Account D) maintained with Financial Institution E. On _____, Taxpayer A went on-line with the intention to purchase two IRA certificates of deposit (CD) with Financial Institution H. However, due to the confusing nature of the on-line instructions, Amount 1 was deposited in Accounts F and G (Amount 2 in total), both non-IRA accounts. The error was not discovered until _____ when Taxpayer's _____ tax return was being prepared.

In addition to the confusing nature of the on-line instructions, Taxpayer A represents she is disabled and suffers from several medical and psychological problems which prevented her from discovering her mistake in a timely manner. The ruling request is accompanied by several letters from her psychotherapist that explains Taxpayer A's conditions and their affect on her ability to manage her financial affairs including her inability to complete the rollover.

Based on the above facts and representations, you request that the Internal Revenue Service ("Service") waive the 60-day rollover requirement contained in section 408(d)(3) of the Code with respect to the distribution of Amount 2.

Section 408(d)(1) of the Code provides that, except as otherwise provided in section 408(d) of the Code, any amount paid or distributed out of an IRA shall be included in gross income by the payee or distributee, as the case may be, in the manner provided under section 72 of the Code.

Section 408(d)(3) of the Code provides the rules applicable to IRA rollovers. Section 408(d)(3)(A) of the Code provides that section 408(d)(1) of the Code does not apply to any amount paid or distributed out of an IRA to the individual for whose benefit the IRA is maintained if -

(i) the entire amount received (including money and any other property) is paid into an IRA for the benefit of such individual not later than the 60th day after the day on which the individual receives the payment or distribution; or

(ii) the entire amount received (including money and any other property) is paid into an eligible retirement plan (other than an IRA) for the benefit of such individual not later than the 60th day after the date on which the payment or distribution is received, except that the maximum amount which may be paid into such plan may not exceed the portion of the amount received which is includible in gross income (determined without regard to section 408(d)(3) of the Code).

Section 408(d)(3)(B) of the Code provides that section 408(d)(3) of the Code does not apply to any amount described in section 408(d)(3)(A)(i) of the Code received by an individual from an IRA if at any time during the 1-year period ending on the day of such receipt such individual received any other amount described in section 408(d)(3)(A)(i) of the Code from an IRA which was not includible in gross income because of the application of section 408(d)(3) of the Code.

Section 408(d)(3)(D) of the Code provides a similar 60-day rollover period for partial rollovers.

Section 408(d)(3)(I) of the Code provides that the Secretary may waive the 60-day requirement under sections 408(d)(3)(A) and 408(d)(3)(D) of the Code where the failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement. Only distributions that occurred after December 31, 2001, are eligible for the waiver under section 408(d)(3)(I) of the Code.

Rev. Proc. 2003-16, 2003-4 I.R.B. 359 (January 27, 2003) provides that in determining whether to grant a waiver of the 60-day rollover requirement pursuant to section 408(d)(3)(I) of the Code, the Service will consider all relevant facts and circumstances, including: (1) errors committed by a financial institution; (2) inability to complete a rollover due to death, disability, hospitalization, incarceration, restrictions imposed by a foreign country or postal error; (3) the use of the amount distributed (for example, in the case of payment by check, whether the check was cashed); and (4) the time elapsed since the distribution occurred.

The information presented and the documentation submitted by Taxpayer A is consistent with her assertion that her failure to accomplish a timely rollover of Amount 2 was due to her medical and psychological disorders which impaired her ability to manage her financial affairs.

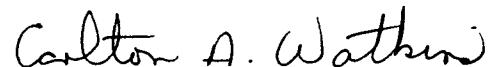
Therefore, pursuant to section 408(d)(3) of the Code, the Service hereby waives the 60-day rollover requirement with respect to the distribution of Amount 2 from IRA B. Taxpayer A is granted a period of 60 days from the issuance of this letter ruling to contribute Amount 2 into a rollover IRA. Provided all other requirements of section 408(d)(3) of the Code, except the 60-day requirement, are met with respect to such contribution, Amount 2 will be considered a rollover contribution within the meaning of section 408(d)(3) of the Code.

No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations which may be applicable thereto.

This letter is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

A copy of this letter ruling has been sent to your authorized representative pursuant to a power of attorney on file in this office. If you wish to inquire about this ruling, please contact (I.D. #), at () - .

Sincerely yours,



Manager
Employee Plans Technical Group

Enclosures:

Deleted Copy of this Letter
Notice of Intention to Disclose, Notice 437

cc: